Tax-Ombudsman in Bangladesh: An Analytical Review of the Regulatory Framework

Swapan Kumar Bala
Pallab Kumar Biswas

Abstract: This paper provides an analytical examination of the regulatory framework of the Tax-Ombudsman in Bangladesh. The concerned statute has been enacted hastily to appoint a Tax-Ombudsman with a view to ascertaining bad governance committed by tax officials/employees engaged in the implementation of tax-related laws and conducting investigations thereon and undertaking preventive or corrective actions relating to those. It is yet to wait a long to see the effective implementation of the Act. Due to some provisions of the Act (e.g., little financial independence, various regulatory constraints and generous counter-effective measures), the Tax-Ombudsman may find difficulty to run his office effectively and efficiently, but he is also given a statutory challenge to fight against fiscal corruption. The Act has been given the supremacy over other Acts and no question can be raised in any court regarding the validity of any action, order or instruction given under the Act and the Act has also the indemnity provision for actions to be taken by the Tax-Ombudsman. However, time-lag in implementation of the Act should be reduced as hurriedly as it was passed in the Parliament.

Keywords: Ombudsman, Tax-Ombudsman, Fiscal corruption.

Introduction

“Corruption is a major cause of poverty as well as a barrier to overcoming it,” said Transparency International Chairman Peter Eigen (Transparency International, 2005). In Bangladesh where “corruption is perceived as most rampant” over a period of continuing five years from 2001 to 2005 (see Table-A1 in appendix) after its inclusion in the “Transparency International Corruption Perceptions Index”, the above generalization is equally applicable. The lack of public accountability and tyrannical public administration with “vast authority but of unfettered type” often entangled with corruption have become the major concern of appointing ‘ombudsman’ in Bangladesh (Hossain 2002). Bangladesh is yet to have an ombudsman although the country has an Ombudsman Act [the Ombudsman Act 1980 (Act No. XV of 1980)] enacted during the era of Late President Ziaur Rahman without its instant effect. The present ruling
Bangladesh Nationalist Party (BNP) Government after coming into power in 2001 made the Act effective on January 6, 2002 through an official Gazette notification after more than two decades without any appointment of ombudsman. The Government formed an eight-member Ministerial Committee to review the Ombudsman Act 1980 for further amendment without which they deferred the first ombudsman’s selection (Shahiduzzaman, 2004). However, the amendment is never finalized to date. In this context, again the current ruling BNP Government has enacted a new Tax-Ombudsman Act 2005 without its instant effect mainly from the pressure of donor agencies. This paper is an analytical review of the regulatory framework for appointment of a tax-ombudsman on the basis of the statute enacted, because only time will show how long it will require to implement the law.

Ombudsman: A Theoretical Overview

Ombudsman – Defined

The word “Ombudsman” has been derived from Germanic language and has its roots from the early days of Germanic tribes. The person who was chosen from a neutral group to collect blood money (Wergild) on behalf of the wrongdoer was called Ombudsman (Chowdhury, 1996: 7; vide Hossain, 2002: 2). However, etymologically modern day’s ‘ombudsman’ is originated from Swedish language. The Swedish word “ombuds” means “officer” or “spokesman” or “representative”. The office of Ombudsman was first conceived in Sweden by the Swedish Constitution Act 1809, over about two centuries ago, as an earlier prototype, the King’s Chancellor of Justice (Rowat, 1986: 135; Wade, 1967: 12). According to dictionary meaning, ombudsman is “a government official whose job is to examine and report on complaints made by ordinary people about the government or public authorities” (Oxford Advanced Learner’s Dictionary, 2000). Professor Rowat (1986) has defined ombudsman as “an independent and politically neutral officer of the legislature who receives and investigates complaints from the public against administrative action and who has the power to criticize and publicize but not the reverse such action.” As per the definition of Loewenstein (1965: 403), “Ombudsman is an independent official chosen by Parliament to watch over the administrative services in whose practices the general public is interested.” Thus, ombudsman is an independent and nonpartisan officer of the legislature, authorized by law to inquire into pronounced grievances of citizens against public authorities and suggest to the concerned authority to take remedial measures.

Like our country, the designation “ombudsman” is directly used in Sweden, Finland and Denmark, while the authority with similar nature of ombudsman is often mentioned in different title in different countries, for instance, in Ukraine it is a Ukrainian Parliament Commissioner for Human Rights, in South Africa a guardian of the people, in Poland a
commissioner for civil rights protection, in France an intermediary of the French Republic, in Latvia a controller of the Seym, in Greece a guardian of citizens, and in Moldova a parliamentary attorney (Shahiduzzaman, 2004).

**Ombudsman – A Historical Note**

To ensure justice, provision for appeal and rectification of errors and wrongdoings is a must. The concept of ombudsman was thought as a measure to raise citizen’s grievance against public authority’s mistakes and misdeeds. Sweden is the first country which made a constitutional provision in 1809 to introduce the office of the Ombudsman of Justice (Justitie Ombudsman). Finland is the second country to introduce the office of Ombudsman in 1919. After the Second World War, the idea of the Ombudsman institution began to spread rapidly throughout Europe. Table-1 shows the year of introducing ombudsman in some selective developed and developing countries.

**Table-1: Introduction of Ombudsman system in selected countries**

<table>
<thead>
<tr>
<th>Developed countries</th>
<th>Year of Establishment</th>
<th>Developing countries</th>
<th>Year of Establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>1809</td>
<td>Tanzania</td>
<td>1966</td>
</tr>
<tr>
<td>Finland</td>
<td>1919</td>
<td>Guyana</td>
<td>1967</td>
</tr>
<tr>
<td>Norway</td>
<td>1962</td>
<td>Mauritius</td>
<td>1970</td>
</tr>
<tr>
<td>New Zealand</td>
<td>1962</td>
<td>India</td>
<td>1971</td>
</tr>
<tr>
<td>Canada</td>
<td>1967</td>
<td>Sri Lanka</td>
<td>1971</td>
</tr>
<tr>
<td>UK</td>
<td>1967</td>
<td>Fiji</td>
<td>1972</td>
</tr>
<tr>
<td>USA</td>
<td>1967</td>
<td>Zambia</td>
<td>1973</td>
</tr>
<tr>
<td>Australia</td>
<td>1971</td>
<td>Nigeria</td>
<td>1975</td>
</tr>
<tr>
<td>France</td>
<td>1973</td>
<td>Nepal</td>
<td>1990</td>
</tr>
</tbody>
</table>

*Source: Jinnah and Elsan (1999).*

**Tax-Ombudsman in Bangladesh: Why?**

As stated earlier, ombudsman is appointed in a country usually under constitutional provision as a preventive authority against the public authorities not to do anything against the citizens of the country. From its inception in 1972, the Constitution of Bangladesh has a provision in article 77 to establish the office of Ombudsman. As per this Constitutional provision, the Parliament may, by law, provide for the establishment of the office of Ombudsman and the Ombudsman shall exercise such powers and perform such functions as Parliament may, by law, determine, including the power to investigate any action taken by a ministry, a public office or a statutory public authority. The Ombudsman shall prepare an annual report concerning the discharge of his functions, and such report shall be laid before the Parliament.
(GOB, 1996). Only in 1980, during the era of Late President Ziaur Rahman, the Ombudsman Act was enacted to effect the constitutional provision. However, during the regime, the office of the Ombudsman had not been established as is the case to date. During Sheikh Hasina’s tenure (1996-2001), the government took up a project titled “Support to the Establishment of an Ombudsman Institution in Bangladesh” in 1999 with a Danish grant of Taka 7 million in order to wrap up the preliminaries for the establishment of the office of Ombudsman. However, no practical progress was achieved, notwithstanding the grant money going literally down the drain. The term of the project has been expired by the end of 2004 (Shahiduzzaman, 2004). In the mean-time, corruption has become the talk-of-the-country through becoming champion among all the countries evaluated by the Transparency International. Among various sectors, Transparency International ranked the fiscal sector sixth in its sector-wise corruption ranks in 2002, but fifteenth in 2004 and again sixth in 2005 (see Table-2). In its report of 2005, Transparency International (TI) mentioned the following corruption in taxation in Bangladesh:

- 49 percent households who paid income tax had to pay bribes at the rate of 7487 taka.
- 14 percent households who paid transport tax had to pay 3166 taka on an average as bribes.
- 9 percent households who paid holding tax had to pay an average amount of 1538 taka as bribes (www.transparency.org).

Table-2: Sector-wise Corruption Ranking in Bangladesh by Transparency International

<table>
<thead>
<tr>
<th>Rank</th>
<th>2002</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Police</td>
<td>Police</td>
<td>Land administration</td>
</tr>
<tr>
<td>2</td>
<td>Lower judiciary</td>
<td>Education</td>
<td>Police and lower judiciary</td>
</tr>
<tr>
<td>3</td>
<td>Land administration</td>
<td>Health &amp; welfare</td>
<td>Health</td>
</tr>
<tr>
<td>4</td>
<td>Health &amp; education</td>
<td>Local government &amp; rural development and communication.</td>
<td>Education</td>
</tr>
<tr>
<td>5</td>
<td>Power sector</td>
<td>Environment and forest</td>
<td>Power supply</td>
</tr>
<tr>
<td>6</td>
<td>Direct and indirect tax</td>
<td>Private sector</td>
<td>Taxation</td>
</tr>
<tr>
<td>7</td>
<td>Nothing mentioned</td>
<td>Disaster management and relief</td>
<td>Shalish (arbitration)</td>
</tr>
<tr>
<td>15</td>
<td>Nothing mentioned</td>
<td>Taxation</td>
<td>Nothing mentioned</td>
</tr>
</tbody>
</table>


But since national budget is related to revenue side of the budget, fiscal corruption was seriously considered by the development partners of Bangladesh. Accordingly on June 10, 2004, Finance and Planning Minister M. Saifur Rahman mentioned in his budget speech of financial year 2004-05 that he had already taken steps to introduce Tax-Ombudsman and he expected to place the Tax Ombudsman Bill to the parliament during the next fiscal year (2005-06). The multilateral donors, especially, the World Bank, had long been pressuring the government to appoint the tax ombudsman. The World Bank is so keen on the issue that it
has even suspended the disbursement of the third tranche of the Development Credit Support (DSC) amounting to US$200 million during June-July 2005 for the government’s failure to appoint a tax ombudsman in time (Financial Express, 10.08.2005). Then Government took hurried steps to enact the Tax-Ombudsman Act in July 2005.

The objective statement of the Tax-Ombudsman Act 2005 states that this is an Act to appoint Tax-Ombudsman with a view to ascertaining bad governance committed by high officials or tax employees engaged in the implementation of tax-related laws and conducting investigations thereon and undertaking preventive or corrective actions relating to those. Bad governance as defined under clause (kha) of section 2,¹ includes the following activities:

1. Undertaking or not undertaking any decision, process, recommendation or activity which–
   (a) is contrary to the related Act, rule or regulation,
   (b) is unethical, discretionary, illogical or inappropriate, biased or discriminatory;
   (c) is established on irrelevant base;
   (d) is performed for dishonest or inconsistent purpose, e.g. bribery, brokerage, biasedness, nepotism or abuse of administrative power;
2. In carrying out the administrative duties and responsibilities, showing negligence or delaying or demonstrating disqualification, inefficiency or incapability.
3. Issuing notice or delaying in hearing without any reason to dispose the following issues:
   (a) determination of income or assets;
   (b) assessment of liability regarding tax or duty;
   (c) classification or valuation of goods;
   (d) settlement of claiming rebate or drawback of tax or duty;
   (e) ascertainment of matters on tax or duty exemption;
4. Intentional mistake in the settlement of claiming rebate or drawback of tax or duty;
5. Intentional delay in making payment or no payment at all of the money regarding drawback of tax or duty already determined by the appropriate authority;
6. Adopting coercive means to collect tax or duty in such cases where the failure to make payment of such tax or duty cannot be identified on verification of record; and
7. Taking no disciplinary action against the tax employee whose order on valuation or assessment is declared by appropriate appellate authority as vindictive, whimsical, biased or clearly illegal (GOB, 2005).
“Tax employee” means any officer or employee of the National Board of Revenue (NBR), the apex tax authority, and any officer or employee of any office under the NBR including any person positioned at a higher level [clause (Uma) of section 2].

“Related Act” means the Provisional Collection of Taxes Act 1931, the Commercial Documents Evidence Act 1939, the Exercise and Salt Act, 1944, the Customs Act 1969, the Income Tax Ordinance 1984, the Gift Tax Act 1990, the Bank Companies Act 1991, the Value Added Tax 1991, the Companies Act 1994, the Travel Tax Act 2003, any other act related to imposition of tax issued by the government through Gazette notification, and any rule, provisos, or notifications made or promulgated under any act mentioned earlier [vide clause (Tha) of section 2].

**Tax-Ombudsman in Bangladesh: A Review of the Regulatory Framework**

**Introduction of the Tax-Ombudsman Act**

For the first time, on June 10, 2004, Finance and Planning Minister M. Saifur Rahman mentioned in his budget speech of 2004-2005 that he has already taken steps to introduce Tax Ombudsman. He expects to place the Tax Ombudsman Bill to the parliament during the next fiscal year. Finance and Planning Minister has maintained his commitment by placing the Tax-Ombudsman Bill 2005 in the Parliament on July 5, 2005 and it was hastily passed on July 10, 2005. On July 12, 2005, the Presidential assent was given to the Tax Ombudsman Act 2005 and the Act was published in the Official Gazette on the same day as Act No. 19 of 2005. See a detailed chronology in Table-A2 in appendix. The Tax-Ombudsman Act 2005 is a 19-page Bengali statute containing 39 sections (as published in the official Gazette on 12.07.2005).

**Appointment and Tenure of Tax-Ombudsman**

According to section 4 of the Tax-Ombudsman Act, one Tax-Ombudsman shall be appointed by the President. In case of casual vacancy or during the temporary absence, the President may employ any person to act as temporary Tax-Ombudsman until the joining of the regular Tax-Ombudsman (section 9). Under normal situation (i.e., unless resigned or removed), the Tax-Ombudsman will be appointed for a four-year single term without any reappointment (section 5).

**Qualifications and Disqualifications of Tax-Ombudsman**

**Qualification: section 7(1)**

Any person having experience of at least 20 years in following areas shall be eligible to be appointed as the Tax-Ombudsman: (i) direct or indirect tax administration or profession; (ii) general or financial administration, law or judgment.
Disqualification: section 7(2)

Following are the disqualifications to be appointed as Tax-Ombudsman, if:

(a) he is not a citizen of Bangladesh;
(b) he has been declared or recognized as a loan-defaulter by any bank or financial institution;
(c) he has been declared or recognized as assessee in default by the National Board of Revenue (NBR);
(d) he has not exempted from the obligation of bankruptcy after being declared as bankrupt by the court;
(e) he has been imprisoned by the court being convicted with a criminal offence relating to moral turpitude or corruption;
(f) he has been in public service;
(g) he has been charged with severe penalty in departmental cases while he was in public service;
(h) he is incapable in discharging the duties due to physical or mental disorder;
(i) he has engaged in or related with any activities within the scope of Tax-Ombudsman’s functions in professional or business interest;
(j) after being appointed as Tax-Ombudsman, he is directly or indirectly involved in any activities related to tax administration using his own name or through any other person or institution for his professional or business interest.
(k) after being appointed as Tax-Ombudsman, he is engaged in any profitable function beyond the scope such position;
(l) he has crossed the age-limit of 67 years.

Official Status of Tax-Ombudsman: The Tax-Ombudsman shall have the equivalent status of a justice in the High Court Division of the Supreme Court [section 11(1)]. The Tax-Ombudsman shall be the chief executive of his office [section 12(1)]. He shall also be treated as the principal accounts officer regarding the expenditure of his office [section 12(2)].

Incapability of Tax-Ombudsman: After the retirement from the post of Tax-Ombudsman, he shall not be eligible for appointment in any profitable position in the Republic’s functions (section 10).

Public Servant: The Tax-Ombudsman including officer-employee, consultant, specialist, member of advisory committee or any person authorized in writing by the Tax-Ombudsman to exercise the Tax-Ombudsman’s power or authority shall be treated as public servant (section 36).
Office and Organization Structure of Tax-Ombudsman

The head office of Tax-Ombudsman shall be in Dhaka, but if necessary, subject to the approval of government, he may establish any branch office elsewhere in the country (section 6). The organizational structure of Tax-Ombudsman shall be determined by the government [section 15(1)]. Although, he may employ as many numbers of officers and employees as necessary to carry out his duties efficiently and the terms and conditions of employment including appointment shall be determined in accordance with the rules to be prescribed [sections 16(1) & 16(2)]. However, in order to carry out his duties properly or in order to assist him in carrying out his duties, the Tax-Ombudsman may with or without remuneration: (a) employ as many number of consultants, specialists, liaison officials or any other employees as necessary; (b) set up one or more advisory committees; (c) form one or more investigation teams consisting of his officers, employees or any other related persons [section 17(1)]. He will determine the number of members and area of functional responsibilities of the investigation team and the advisory committee or sometimes the order under which the advisory committee has been formed will determine its scope of functional responsibilities [sections 17(2) & 17(5)]. After completion of investigation and carrying out of the duties assigned to them, the investigation team and advisory committee shall submit their reports with necessary recommendations to the Tax-Ombudsman within the prescribed time period [section 17(3)].

Resignation and Removal of Tax-Ombudsman

The Tax-Ombudsman can resign by submitting his resignation letter duly signed by him to the President who may request him to continue his service till the formal acceptance of the resignation letter [section 8(1)]. He can be removed from his office in a manner like a justice of the Supreme Court due to severe misconduct or physical/mental incapability [sections 8(2) & 8(3)].

Compensation of Tax-Ombudsman

The remuneration, allowances and other facilities of the Tax-Ombudsman shall be determined by the government. During his tenure, these compensations cannot be changed in a manner that may be disadvantageous to him [sections 11(2) & 11(3)].

Duties and Responsibilities of Tax-Ombudsman

Section 13 defines the following duties and responsibilities of the Tax-Ombudsman:

1. **Investigation on Complaints**: Subject to some restrictions, the Tax-Ombudsman can investigate the complaint of any aggrieved person, or the complaint on the bad governance of the NBR or any tax employee upon receiving any reference of the President, the Prime Minister, the Finance Minister, or National Parliament, or being directed by the Supreme...
Court or by his own discretion [section 13(1)]. But the Tax-Ombudsman shall have no right to investigate or make an enquiry:

(a) if subject-matter mentioned in the complaint or reference is under trial of an appropriate court or Tribunal or where applicable, under consideration of the NBR on the date of receiving the complaint or reference [section 13(2)(a)];

(b) if there is any scope of appeal, review or revision in the concerned tax law regarding determination of income, assessment of liability on tax or duty, classification or valuation of goods, then any complaint against any tax employee regarding these issues [section 13(2)(b)]. However, notwithstanding anything contained in any other act, any person can make a complaint on the bad governance of a tax employee related to determination of income, assessment of liability on tax or duty, classification or valuation of goods [proviso to section 13(2)]. No complaint regarding the employment of the tax employee made by him or other on his behalf can be accepted by the Tax-Ombudsman [section 13(3)].

(2) Survey and Research: With a view to fulfilling the objectives of the Tax-Ombudsman Act (i.e., ascertaining bad governance and conducting investigations thereon and undertaking preventive or corrective actions relating to those), particularly in order to ascertain the reasons behind illegality, whimsicality, biasedness or discrimination, the Tax-Ombudsman can, from time to time, undertake survey or research and make recommendations based the findings of such survey or research to the Finance Minister to remove such bad governance factors [section 13(4)].

(3) Submission/Publication of Annual Report and others (section 31): The Tax-Ombudsman shall within three months from the end of English calendar year submit the annual report to the president and president shall make the necessary arrangement to present the same to the Parliament. The annual report may be submitted to the Finance Minister on his request and may be published and made it public at a reasonable price. The Tax-Ombudsman may, after consulting with the Finance minister, take actions to publish for public any such investigation, decision, results, recommendations, idea or suggestion regarding any subject dealt with by his department.

Subject to restrictions elsewhere mentioned in the Tax-Ombudsman Act, the Tax-Ombudsman shall be independent in carrying out his duties under the act (section 14).

**Financial Administration in Tax-Ombudsman’s Office**

Financial authority of the Tax-Ombudsman is dependent on the budgetary provision of the Government. However, the Tax-Ombudsman shall not require any pre-authorization for incurring expenditure out of the allocation provided in the budget by the government every
year for necessary expenditure [section 15(2)]. But he shall maintain the accounts of all allocated fund spent by him and such accounts shall be subject to the authority of the Comptroller and Auditor General as a statutory public authority [section 15(2)]. As per section 17(4), the Tax-Ombudsman may provide honorarium or remuneration to the investigation team or the members of the advisory committee or any specialist, consultant, or other employee employed by him. In the budget of financial year 2005-2006, there is no budgetary allocation provided for Tax-Ombudsman’s office although there is a total annual allocation of Taka 100 million for the Anti Corruption Commission (Annual Budget 2005-06: Demands for Grants and Appropriations). This is probably the fact that the Tax-Ombudsman Act was passed by the Parliament after twelve days after passing the budget. However, expenses regarding the remuneration payable to the Tax-Ombudsman and officers-employees, representatives and clients including the Tax-Ombudsman’s official administrative expenses will be accountable on consolidated fund of the budget (section 37).

Powers and Functions

The Tax-Ombudsman has been provided statutorily following powers to exercise to do his functions properly:

- Employment of officers and employees (section 16): The Tax-Ombudsman can employ as many numbers of officers and employees as necessary to carry out his duties efficiently, but the terms and conditions of employment including appointment shall be made as per prescribed rules.

- Appointment of consultants and similar other persons (section 17): The Tax-Ombudsman can appoint consultant, investigation team, advisory committee, liaison committee or any other employee in order to carry out his duties properly or in order to assist him in carrying out his duties with specific time-frame and reporting requirement.

- Acceptance of complaints, investigation and taking oath (sections 18 and 22): The Tax-Ombudsman shall accept any complaint only in writing and not from any disguised person within the stipulated period of six months from date of the concerned event. But in case of appropriate reason, the Tax-Ombudsman may extend this time-limit. He, then, on the basis of the complaint, will issue a written notice to the person against whom the complaint is made and one copy of such notice shall be provided to the NBR’s Chairman. In case of failure to comply with such notice given, the Tax-Ombudsman may start the investigation activities. The investigation by the Tax-Ombudsman shall generally be conducted confidentially but where necessary, it may be done openly. However, any such investigation shall not influence any arrangement made by the NBR and decline the NBR’s power to make additional arrangement regarding any matter under its investigation. Tax-Ombudsman may direct any tax-employee to provide the relevant and useful information or document for the sake of the investigation and all such
information and document shall be considered as confidential. In case of any investigation, the Tax-Ombudsman or any person authorized by him shall have some special authority such as, issuance of summon to the witness and ensuring his/her presence, revealing any documents and production thereof, taking evidence on oath, issuance of warrant for interrogating the witness and examining the documents, and undertaking any other actions as required.

- **Suggesting recommendations (sections 20 and 21):** If after undertaking all necessary investigation, the Tax-Ombudsman is of the opinion that there has been “bad governance” or certain tasks have been accomplished through bad governance, he shall submit the recommendations in writing to the NBR within fifteen days after the completion of such investigation. The NBR is liable to implement the recommendations within sixty days of intimating these ones or to inform the Tax-Ombudsman duly in case of failure to implement those and in this case of failure, the NBR will be held liable and the Finance Minister may be informed and the recommendations will be incorporated into the concerned person’s (i.e., the tax official/employee against whom the complaint was made) ‘Annual Confidential Report (ACR)’ after giving an opportunity of hearing.

- **Power to enter into premises and search (section 24):** If the Tax-Ombudsman or his authorized person is of the belief that there is a chance to get any documents, materials or accounts in any premises, then they can enter into that premises and conduct necessary search and confiscate those and collect required copies or comments.

- **Power to authorize (sections 26 and 27):** In case of necessity, the Tax-Ombudsman can authorize any person within his office or from other agencies in writing to conduct any required tasks under the Act.

- **Request for assistance from other person/authority (section 29):** The Tax-Ombudsman can request other person or authorities to assist him in order to exercise his power and to carry out his functions and those persons or authorities will also assist him according to their power and ability.

- **Power to order for submitting affidavit and facing the lie-detector (section 30):** The Tax-Ombudsman or any official in his office can give order to any person making the complaint or any party related to the complaints or investigation or reference to submit the attested or notarized affidavit. He can also give order to the concerned person to face the lie-detector.

- **Rewarding for exceptional services or special assistance (section 32):** The Tax-Ombudsman can arrange to give award to anybody for exceptional services or special assistance and the award-recipient’s identity may be kept confidential on his request.

- **Power to resolve dispute in an alternative way (section 35):** Notwithstanding anything contained in the Tax-Ombudsman Act, before filing any complaint or issuance of a formal notice to any party, the Tax-Ombudsman or any authorized officer or employee shall have the authority to resolve any dispute or arbitration in any alternative way.
Power to make rules (section 38): In order to fulfill the objectives of the Act, the Tax-Ombudsman may make necessary rules through Gazette notification and prior approval of the Government.

Remedies against Tax-Ombudsman’s Recommendation

Under section 25, if any person is aggrieved by any recommendation made by the Tax-Ombudsman, s/he can apply to the Finance Minister through proper channel authority within sixty days of the recommendation and the Finance Minister will make the appropriate order on this application on the basis of his own consideration.

Final Remarks and Conclusion

Pakistan has established the Federal Tax Ombudsman (FTO) in 2000 just after the passage of the relevant statute (Saeed, 2004: 33). Since its hasty enactment, there is no vivid step over the last half year to make the Tax-Ombudsman Act effective in Bangladesh and to give practical appointment of the Tax-Ombudsman. Since the constitutional Ombudsman has not yet been appointed, there is some doubt about the enforcement of this Act also. Even after appointment of the Tax-Ombudsman, to what extent he can run his office effectively and efficiently in curbing fiscal corruption, that is also made questionable by observing the performance of the Anti Corruption Commission over its first operating year (on 17-02-2004, the Anti Corruption Commission Act 2004 was passed and on 09-05-2004, the Act became effective and on 21-11-2005, the formation of the Anti Corruption Commission was notified in the Gazette with immediate effect). However, the Tax-Ombudsman Act has been given the supremacy over other Acts. According to section 3, “Notwithstanding anything contained in any other Act, the provisions of this Act shall be in force.” Besides, no question can be raised in any court regarding the validity of any action, order or instruction given or seemed to be given under the Tax-Ombudsman Act (section 33). In addition to this, all the actions undertaken by the Tax-Ombudsman, his representative or any of his authorized person are indemnified if those are conducted on good faith (section 34). But, the fact is that no financial independence is given to the Tax-Ombudsman to prepare the budget. And since Government will determine the organizational structure, the Tax-Ombudsman’s authority given to employ adequate number of necessary employees become meaningless. The counter-effective measure against the Tax-Ombudsman’s recommendations has been provided to the appropriate consideration of the Finance Minister who might be accessible in many cases in a small country like Bangladesh. The taxmen are also aggrieved due to the reason that when corruption is more rampant elsewhere than that in tax department, but they have to face the Tax-Ombudsman. We can only expect the most desired beginning to see the end of not only fiscal bad governance, but all sorts of corruption.
References


Appendix

Table-A1: Ranking of SAARC Countries by Transparency International in terms of CPI

<table>
<thead>
<tr>
<th>Country</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of countries covered</td>
<td>91</td>
<td>102</td>
<td>133</td>
<td>146</td>
<td>159</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>91</td>
<td>102</td>
<td>133</td>
<td>145 along with Haiti, hence last rank</td>
<td>158 along with Chad, hence last rank</td>
</tr>
<tr>
<td>India</td>
<td>73</td>
<td>73</td>
<td>83</td>
<td>91</td>
<td>92</td>
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<tr>
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<td>94</td>
<td>117</td>
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<tr>
<td>Pakistan</td>
<td>80</td>
<td>77</td>
<td>96</td>
<td>132</td>
<td>146</td>
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<tr>
<td>Sri Lanka</td>
<td>NI</td>
<td>56</td>
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</tr>
<tr>
<td>Bhutan</td>
<td>NI</td>
<td>NI</td>
<td>NI</td>
<td>NI</td>
<td>NI</td>
</tr>
<tr>
<td>Maldives</td>
<td>NI</td>
<td>NI</td>
<td>NI</td>
<td>NI</td>
<td>NI</td>
</tr>
</tbody>
</table>

‘NI’ – not included, ‘CPI’ – Corruption Performance Index

Source: http://www.transparency.org

Table-A2: A Chronology of Passing the Tax Ombudsman Act 2005

<table>
<thead>
<tr>
<th>Date</th>
<th>Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-06-2004</td>
<td>Finance and Planning Minister M. Saifur Rahman mentioned in his budget speech of 2004-2005 that he has already taken steps to introduce Tax Ombudsman. He expects to place the Tax Ombudsman Bill to the parliament during the next fiscal year.</td>
</tr>
<tr>
<td>13-12-2004</td>
<td>The Tax Ombudsman Bill 2005 was placed in the Cabinet for approval. The Cabinet approved the bill in principle but it was sent again to the Ministry of Law for further scrutiny of the bill and incorporation of the recommendations of the Cabinet before placing it for the Cabinet’s final approval.</td>
</tr>
<tr>
<td>08-01-2005</td>
<td>While speaking at an exchange of views session with the joint secretary level officers at PATC, Savar, the Law Minister said that the Tax Ombudsman law, when enacted, would play an effective role in establishing transparency and accountability in the revenue sector to check corruption. He also disclosed that the government would appoint ombudsman gradually in each sector.</td>
</tr>
<tr>
<td>04-01-2005</td>
<td>The Cabinet discussed in detail the draft of Tax Ombudsman Act, 2005 and asked the relevant ministry to place it again before the Cabinet after further scrutiny.</td>
</tr>
<tr>
<td>05-07-2005</td>
<td>Finance and Planning Minister M. Saifur Rahman placed the Tax Ombudsman Bill 2005 in the Parliament and it was sent to the concerned parliamentary standing committee for scrutiny before reporting to the House by one day.</td>
</tr>
<tr>
<td>06-07-2005</td>
<td>The concerned parliamentary standing committee submitted its report.</td>
</tr>
<tr>
<td>10-07-2005</td>
<td>The Parliament passed the Tax Ombudsman Bill-2005 as the Tax Ombudsman Act 2005 with its effective date to be prescribed by the Government through official Gazette notification.</td>
</tr>
<tr>
<td>12-07-2005</td>
<td>Presidential assent was given to the Tax Ombudsman Act 2005 and the Act was published in the Official Gazette as Act No. 19 of 2005.</td>
</tr>
</tbody>
</table>

Endnote

1. Section or sub-section, clause and sub-clause mentioned without referring to any Act is to be considered as of the Tax-Ombudsman Act 2005.